

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
MAR 01 2012

CLERK

STEVEN JON WEST

CIV 11-1014

Petitioner,

-vs-

ORDER DENYING
CERTIFICATE OF APPEALABILITY

ROBERT DOOLEY, Warden, Mike Durfee
State Prison, and MARTY J. JACKLEY,
Attorney General of the State of South Dakota,

Respondents.

TO THE EIGHTH CIRCUIT COURT OF APPEALS:

This Court dismissed petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on the basis that he had failed to file within the one year period of limitations. Petitioner filed a notice of appeal. The notice of appeal may be treated as an application for a certificate of appealability. Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997).

Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. This construction gives meaning to Congress' requirement that a prisoner demonstrate substantial underlying constitutional claims and is in conformity with the meaning of the "substantial showing" standard . . . Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted.

Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 1604, 146 L.Ed.2d 542 (2000) (emphasis supplied). Petitioner did not and has not made a substantial showing that jurists of reason would find it debatable whether this matter was correctly dismissed as untimely.

IT IS HEREBY CERTIFIED that there does not exist probable cause of an appealable issue with respect to the Court's order denying petitioner's petition for a writ of habeas corpus. Petitioner's application for a certificate of appealability is denied. This in no way hampers the petitioner's ability to request issuance of the certificate by a circuit judge pursuant to Fed. R.

App. P. 22.

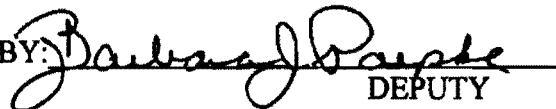
Dated this 28th day of February, 2012.

BY THE COURT:



CHARLES B. KORNMAN
United States District Judge

ATTEST:
JOSEPH HAAS, Clerk

BY: 
DEPUTY
(SEAL)